Supreme Court, U.S.
FILED
APR 5 1986
JOSEPH F. SPANIOL, JR.
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No. 85-1234

In The

# Supreme Court of the United States

October Term, 1985

C. Y. BENAVIDES, JR., WEBB COUNTY JUDGE, RICHARD MORALES, JR., COMMISSIONER, PRECINCT 3, WEBB COUNTY, HOMERO MATA, COMMISSIONER, PRECINCT 1, WEBB COUNTY, L. H. GUERRA, COMMISSIONER, PRECINCT 2, WEBB COUNTY, ARNULFO SANTOS, COMMISSIONER, PRECINCT 4, WEBB COUNTY, IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE WEBB COUNTY COMMISSIONERS COURT; THE COMMISSIONERS COURT OF WEBB COUNTY, TEXAS, WEBB COUNTY, TEXAS,
*Petitioners,*

*vs.*

EDGARO A. GONZALEZ, JR.,
*Respondent.*

*On Petition For Writ of Certiorari*
*To The United States Court of Appeals*
*For The Fifth Circuit*

## RESPONDENT'S BRIEF IN OPPOSITION

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C. Y. Benavides, Jr., Webb County Judge, Richard Morales, Jr., Commissioner, Precinct 3, Webb County, Homero Mata, Commissioner, Precinct 1, Webb County, L. H. Guerra, Commissioner, Precinct 2, Webb County, Arnulfo Santos, Commissioner, Precinct 4, Webb County, in their Official Capacity as Members of The Webb County Commissioners Court; The Commissioners Court of Webb County, Texas, Webb County, Texas,

*Petitioners,*

*vs.*

Edgaro A. Gonzalez, Jr.,

*Respondent.*

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*For The Fifth Circuit*

## RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Edgardo A. Gonzalez, Jr., respectfully requests that this Court deny the petition for writ of certio-

rari, seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 774 F.2d 1295 (5th Cir. 1985).

## STATEMENT OF THE CASE

Petitioner's Statement of the Case is for the most part self-serving and omits facts material to the consideration of the Questions Presented in the petition. Respondent believes the Trial Court's Supplemental Findings of Fact and Conclusions of Law (Pet. 69a) and the Fifth Circuit's opinion in *Gonzalez II* (Pet. 18a) sufficiently and accurately detail the facts necessary for consideration of the Questions Presented. (*See* Pet. 20a-23a, 28a-29a, 32a-33a, 71a-81a.) The Petitioners do not dispute any of those fact findings.

Petitioners incorrectly state in the petition at page 5 Respondent requested that he be allowed to make a public statement at the *conclusion* of the investigation on June 23, 1980. The facts show Respondent asked to be placed on the agenda of the June 23rd meeting and made the statement at the beginning of the meeting. (Pet. 40a-41a.) That afternoon, after the Petitioners had interviewed a total of twenty-six witnesses, they invited Respondent into executive session to further discuss the matter. (Pet. 41a; *See* Pet. 22a.)

## REASONS WHY THE WRIT SHOULD BE DENIED

### The Court Below Fully Considered and Correctly Decided the Issues.

Petitioners contend the decision below is a departure from principles announced by this Court in *Connick v. Meyers*, 461 U.S. 138 (1983) However, if carefully read and reasonably interpreted, Petitioners' true argument is that the *holding* in *Connick* mandates a contrary result in this case. Their argument is foreclosed by the differences between this case and *Connick* in the character of the speech involved and the nature of the employment relationships. This case simply turns upon its own facts.

Respondent's speech concerned matters of substantial public concern. Petitioners make no suggestion to the contrary in their petition. By contrast, the speech in *Connick* touched upon matters of public concern in only a most limited sense prompting this Court to find that such a limited first amendment concern did not require the employer to tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Petitioners' argument that similar recognition should have been given to their view of the impact of Respondent's speech is based on the premise that a close working relationship was essential to the fulfillment of their public responsibilities. (*See Connick*, supra at 152.) No such relationship was essential in this case and indeed did not exist. Moreover, as the courts below correctly found, Petitioners failed to offer evidence at the trial that Respondent's speech in any way affected, or was likely to affect, the efficient implementation of the goals and programs of the CAA. The facts of this case are

clearly not susceptible to the reasoning of the holding in *Connick* due to the disparate factual situations involved. Consequently, Petitioners now attempt in their petition to describe a purported "view" of the matter which they failed to articulate, much less prove, at the trial.

In view of the Petitioners' heavy reliance on language used by the Court below in *Gonzalez I* (Pet. 9, 13, 15, 20) to describe the types of relationships worthy of protection, it is important to note that Court was operating under two crucial errors in its perception of the facts. The Court mistakenly believed Respondent had denied the authority of Petitioners to fire him and that Respondent had refused to recognize the authority of the Petitioners over him. (*See* Pet. 71a, 79a.) The trial court found this was not the case (Pet. 71a, 79a) and the Court in *Gonzalez II* acknowledged the earlier mistake. (Pet. 22a, 32a.)

Petitioners argue the Courts below failed to give due weight to their governmental interest, as described in *Gonzalez I*, in maintaining a secure and confident relationship with Respondent as Executive Director of the CAA. Their argument suggests that efficiency of public service was promoted by discharging Respondent for his failure to blindly agree with them regarding their role as governmental sponsor of the CAA. The facts do not support their argument.

The primary responsibility for the efficient performance of the services provided by the CAA to the public was in the hands of the Administering Board and the Executive Director. (*See* Pet. 78a.) While the Commissioners Court was, by statute, the source of authority for the CAA, its

functions were mainly approval and ratification of the actions and policies of the Administering Board. The Administering Board was the immediate superior of Respondent and was responsible for supervising his work. (Pet. 78a). Thus, there was little connection, if any, between the relationship of Respondent and Petitioners and the government's interest as described in *Connick* of efficiently performing its services to the public. Rather, any disagreement as to program policies or activities which might have a bearing on efficiency would most likely occur between Respondent and the Administering Board, not Petitioners. As the trial court pointed out:

> "In this context, the mere statement by [Respondent] that he believed the Commissioners Court was acting outside its authority *vis-a-vis* the Administering Board could hardly be said to have a substantial adverse impact on his relationship with the Commissioners Court, much less hamper the Commissioners Court in its overall repsonsibility for the program."

(Pet. 79a).

Petitioners were not concerned with the fulfillment of their responsibilities to the public when they demanded Respondent retract his statements. Rather, they were selfishly preoccupied with their own power to the point of stating they would abandon the CAA if their own opinion about their function and authority was incorrect. (*See* Pet. 72a.) The "policy" Petitioners were truly concerned with was their opinion that they could do whatever they wanted regardless of federal guidelines and the views of the representatives of the public on the Administering Board. This position was drastically inconsistent with a true concern

for the public they were elected to serve and specifically those who directly benefitted from CAA programs. The CAA was created and heavily regulated by federal law and disregarding federal guidelines risked federal funding essential to the existence of the program. The question of the role of the Petitioners *vis-a-vis* the Administering Board should have been clarified through communication with CSA in view of the requirement that CAA policies and procedures comply with the CSA guidelines. Respondent suggested this course several times and demonstrated his loyalty by offering to help Petitioners change the policies to suit them. As the trial court noted, Respondent's suggestion that they seek clarification from CSA or change the written policies and procedures, would, if anything, assist Petitioners in properly discharging their duties to the public. (Pet. 81a.)

The Court below faithfully adhered to the *Pickering-Connick* requirement of giving full consideration to the government's interest in the effective and efficient fulfillment of its responsibilities to the public. The Petitioners' requirement that Respondent blindly agree with their interpretation of policies and procedures cannot be used to justify their retaliatory action against Respondent under the rubric of the Petitioners' interest in promoting the efficiency of public service. The evidence shows this was not their goal. Such a policy would impermissibly chill speech by public employees on matters of public concern, and as in this case, on matters of public concern peculiarly within the sphere of the responsibilities of his position.

For the foregoing reasons, as well as the reasons set

forth in the decisions below, the Fifth Circuit fully considered and correctly decided the issues.

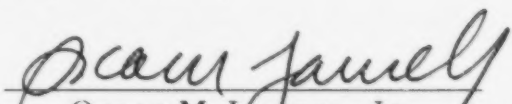
**There is No Conflict Among the Courts that Warrants this Court's Intervention.**

Petitioners acknowledge the record in this case is one of first impression. (Pet. 9.) Accordingly, they cite no conflict between the decision of the Court below and a decision of another court of appeals and none exists. There is likewise no conflict between the decision of the Court below and a decision of this Court. The very uniqueness of this case precludes review by this Court.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

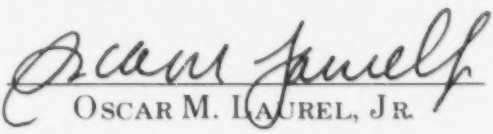
Respectfully submitted,



OSCAR M. LAUREL, JR.
*Attorney for Respondent*

## CERTIFICATE OF SERVICE

This is to certify that three copies of Respondent's Brief in Opposition have this 4th day of April, 1986 been mailed to Mr. Lawrence A. Mann, 1016 Flores Ave., Ste. 2, Laredo, Texas 78042-0880, attorney for petitioners.



OSCAR M. LAUREL, JR.